

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

MATT BONFIGLI et al.,  
Plaintiffs and Appellants,

v.

CHRISTOPHER ST. JOHN et al.,  
Defendants and Respondents.

A104894

(Contra Costa County  
Super. Ct. No. C02-03290)

In this case we revisit the interplay between sports activities and the law of primary assumption of risk, as explored in *Knight v. Jewett* (1992) 3 Cal.4th 296 (*Knight*) and its progeny. In this case, that interplay applies to recreational dirt bike riding.

Plaintiff Matt Bonfigli and defendant Christopher St. John were riding dirt bikes on separate trails in a regulated public park dedicated to off-road vehicles. Traveling at a speed of 45 to 55 miles per hour (mph) and approaching a blind curve, 17-year-old St. John lost control of his bike, crossed over a berm into Bonfigli's trail, and collided head on with Bonfigli's bike, injuring him. Bonfigli and his wife sued St. John and his father. The two defendants moved for summary judgment on the ground of assumption of risk. The trial court granted the motion. Plaintiffs appeal. We reverse because there is a triable issue of fact whether defendant's conduct was so reckless as to be totally outside the range of the ordinary activity involved in the sport of dirt bike riding.

**I. FACTS**

The facts are essentially undisputed except where noted.

Hollister Hills Off-Highway Motor Vehicle Park (Hollister Hills) is a state park designated for off-road vehicles such as “dirt bike” motorcycles. Riders use their off-road vehicles on various “trails” through Hollister Hills—but the trails are actually dirt roads.

On May 18, 2002, plaintiff Matt Bonfigli and defendant Christopher St. John (hereafter “plaintiff” and “defendant”) were riding dirt bikes through Hollister Hills. Defendant was riding his dirt bike on the trail known as Wood Camp Road. Plaintiff was riding on the trail known as Rancho Road. Both trails were one way and were intended for off-road motorcycle travel in opposite directions. Defendant’s trail, Wood Camp Road, is one way coming back to the Hollister Hills entrance gate. Plaintiff’s trail, Rancho Road, is one way heading into the park.

Wood Camp Road has a blind curve near a point where it briefly runs parallel to Rancho Road. As defendant approached that blind curve at high speed, he lost control of his dirt bike, crossed over an earthen berm onto Rancho Road, and collided head on with plaintiff who was traveling in the opposite direction. To cross between the two roads, defendant had to traverse “natural landscaping consisting of shrubs, trees, grass, and dirt.” As a result of the accident, plaintiff sustained injuries including a broken arm.

Plaintiff sued defendant for negligence; negligence per se for violating several Vehicle Code statutes, including section 38305, governing off-road vehicle operation; and reckless conduct. Plaintiff alleged that defendant was traveling in the wrong direction on a one-way trail at an unsafe speed when he collided with plaintiff. Plaintiff further alleged that defendant’s conduct was not only negligent but reckless—in “willing and wanton disregard for the safety of . . . other persons and their property.”<sup>1</sup>

Defendant moved for summary judgment on the ground that plaintiff’s causes of action were barred by the doctrine of primary assumption of risk. Defendant argued that

---

<sup>1</sup> Plaintiff also sued defendant’s father, Jay St. John, for negligent supervision and “liability for the actions of a minor.” Plaintiff’s wife, Shannon, also sued for loss of consortium. These causes of action play a minor role in our factual and legal analysis. For the sake of simplicity we continue to refer to plaintiff and defendant in the singular.

under the rule of *Knight* he was not liable to plaintiff because his conduct was neither so reckless as to be totally outside the range of the ordinary activity involved in the sport of dirt bike riding, nor increased the inherent risk of the sport.

In support of his motion, defendant presented the deposition testimony of park ranger Michael Stavro to the effect that there were no posted speed limits on Wood Camp or Rancho Roads, or for that matter on any dirt bike trail in Hollister Hills. Stavro testified the speed limit on the trails was governed by Vehicle Code section 38305, which provides that “No person shall drive an off-highway motor vehicle at a speed greater than is reasonable or prudent and in no event at a speed which endangers the safety of other persons or property.” Stavro also testified that contrary to motor vehicle operation on the highway, there was no specific Vehicle Code section prohibiting driving a dirt bike the wrong way on a one-way trail.

According to Stavro, there were two or three injury motorcycle accidents per weekend, or over 100 a year, at Hollister Hills. Many of these resulted in broken bones. Eighty percent of the accidents involved excessive speed. There were an average of three or four head-on collisions a year.<sup>2</sup> Some accidents result in a rider becoming paralyzed, and there are one or two fatalities a year.

In response to the summary judgment motion, plaintiff presented evidence that there were signs at the entrance to Hollister Hills informing dirt bike riders of rules and regulations, and that all provisions of the Vehicle Code were enforced. The rider also receives a brochure containing rules of the road and statement confirming enforcement of the Vehicle Code. Plaintiff testified at his deposition that the brochure does not state, “Ride at your own risk.”

Plaintiff presented further evidence about Hollister Hills. He also relied on the deposition of park ranger Stavro.

---

<sup>2</sup> This figure may include both Hollister Hills and another park. The record is unclear.

Approximately 145,000 people ride dirt bikes at Hollister Hills each year. Hollister Hills has opening and closing hours, and closes when it's wet. The trails are maintained with heavy equipment, including road graders. According to Stavro's testimony, the goal of Hollister Hills is to provide a safe riding area "for the families and anybody who does use the area." Stavro further testified that Hollister Hills has a "family atmosphere"—"the families feel very safe."

Armed rangers such as Stavro patrol Hollister Hills. Traffic signs throughout Hollister Hills are clearly posted to indicate a trail is one way in the direction the viewer is traveling, and corresponding signs tell the viewer to "Do Not Enter" a trail one way coming toward him. This signage contributes to the safety of the riders in Hollister Hills.

Plaintiff also presented the deposition of a witness who said defendant was riding at 45-55 miles per hour (mph) at the time of the accident. The witness colorfully described defendant as riding "balls out" toward the blind curve, and riding "wrapped up" and "wrapped up two-stroke on the pipe"—expressions meaning riding at full throttle. The witness said defendant "flew" by him and was "really flying." The witness said to himself, "that guy is an idiot."

Hollister Hills color codes its trails with a system borrowed from skiing. A green circle designates the safest trails, considered safe for novices and children—much like a "bunny slope" for skiers. A blue square designates a more difficult trail, and a black diamond designates a trail for the most aggressive riders.

Wood Camp and Rancho Roads were green circle trails. Stavro testified at his deposition that, in his opinion, the safe speed at the location of the accident was 20 mph. Defendant was heading toward the entrance gate and the accident site was where the trails merge into the main road, within 300 feet of the gate leading to the Day Use Area.

Stavro has 20 years experience, much of it with off-road vehicles such as dirt bikes. In his opinion, defendant's conduct "could be considered reckless" given his "speed in excess of 50 [mph] with an intersection coming up, or an area which is full of people, kids, families, which is a high concentration area where people . . . start out on

their trail ride . . . .” He also opined that defendant’s driving the wrong way at 55 mph increased the risks inherent in the sport of dirt biking.

The trial court granted the motion for summary judgment, citing *Knight, Distefano v. Forester* (2001) 85 Cal.App.4th 1249 (*Distefano*), and *Record v. Reason* (1999) 73 Cal.App.4th 472 (*Record*). The court found that defendant’s conduct was “not intentional or reckless conduct outside the range of the ordinary activity [of] the sport and did not increase the risk to plaintiff beyond the risk inherent in the sport of off-roading.” The court also found that plaintiff’s negligence per se claim was not viable, since the Vehicle Code statutes on which he relied did not show a legislative intent to abrogate the rule of *Knight*.

## II. DISCUSSION

We review the grant of summary judgment *de novo*. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) A defendant moving for summary judgment bears the initial burden of showing that one or more elements of a cause of action cannot be established, or that there is a complete defense to the cause of action. Once this burden is met, the burden shifts to the plaintiff to show that there is a triable issue of material fact as to the cause of action, supported by reference to specific facts and not mere allegations of the pleadings. (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849; *Brizuela v. CalFarm Ins. Co.* (2004) 116 Cal.App.4th 578, 586.)

Summary judgment is a “drastic measure that deprives the losing party of a trial on the merits. [Citation.]” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1107 (*Molko*)). It should therefore “be used with caution . . . .” (*Ibid.*) On review of a grant of defense summary judgment, we view the evidence in the light most favorable to the plaintiff. (*Ibid.*; *Kilroy v. State* (2004) 119 Cal.App.4th 140, 142.) “Any doubts as to the propriety of granting the motion should be resolved in favor of the party opposing the motion.” (*Molko, supra*, 46 Cal.3d at p. 1107.)

### *The Law of Assumption of Risk*

In *Knight* and subsequent cases, the California Supreme Court has stated that the doctrine of primary assumption of risk severely limits the tort liability of a participant in sports activities for injuries sustained by a coparticipant. Generally, a sports participant has a duty of care to a coparticipant only to refrain from intentional or certain reckless behavior. A participant breaches a duty of care only if he intentionally injures the coparticipant, or injures him by engaging in conduct “. . . ‘that is so reckless as to be totally outside the range of the ordinary activity involved in the sport.’ [Citation.]” (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 995-996 (*Kahn*); *Cheong v. Antablin* (1997) 16 Cal.4th 1063, 1068 (*Cheong*); *Knight, supra*, 3 Cal.4th at p. 320, fn. omitted.)<sup>3</sup>

But there is another aspect to the *Knight* rule. The Supreme Court, while stating that the duty of care is based on intentional conduct and recklessness, has also spoken in terms of a participant’s duty of due care to a coparticipant not to increase the risk beyond those risks inherent in the sport. (*Cheong, supra*, 16 Cal.4th at p. 1068; *Knight, supra*, 3 Cal.4th at pp. 315-316.) Of course, “due care” normally bespeaks a negligence analysis. (See *Cheong, supra*, 16 Cal.4th at pp. 1078-1079 [conc. opn. of Chin, J.]; see also Prosser & Keeton, Torts (5th ed. 1984) § 31, p. 169.)

---

<sup>3</sup> *Knight* stated this rule in a three-Justice plurality opinion, with the late Justice Mosk providing the fourth vote in a separate opinion which concurred generally with the plurality. (*Knight, supra*, 3 Cal.4th at pp. 299, 321; *Knight, supra*, at p. 321 [conc. & dis. opn. of Mosk, J.].) For some time there was some debate over whether the rule of *Knight* commanded a majority of the court. (Compare *Cheong, supra*, 16 Cal.4th at p. 1067 [majority opn.] with *Cheong, supra*, at p. 1075 [conc. opn. of Kennard, J.]; see, e.g., *Ford v. Gouin* (1992) 3 Cal.4th 339, 351 [conc. opn. of Kennard, J., in companion case to *Knight*]; *Staten v. Superior Court* (1996) 45 Cal.App.4th 1628, 1632, fn. 3 (*Staten*); *Davis v. Gaschler* (1992) 11 Cal.App.4th 1392, 1397.) But *Cheong* commanded a majority of the court (16 Cal.4th at pp. 1063, 1072), and in any case *Kahn* reaffirms and restates the *Knight* rule in a majority opinion signed by five Justices. (*Kahn, supra*, 31 Cal.4th at pp. 995-996, 1018.)

*Kahn* applied the *Knight* rule, involving coparticipants, to the analogous context of athletic coach and student.

For instance, at the outset of its discussion of the new rule of assumption of risk it was about to develop, *Knight* cites Civil Code section 1714—which declares that everyone is responsible for the results of their willful acts or injuries caused by their failure to exercise ordinary care. *Knight* cites the statute for the proposition that “persons have a duty to use due care to avoid an injury to others, and may be held liable if their careless conduct injures another person.” (*Knight, supra*, 3 Cal.4th at p. 315.) This is the language of negligence. Recklessness requires an *intentional* act so unreasonable or dangerous that the actor knows, or should now, it is highly probable to cause harm. The act is often committed with conscious indifference to its consequences. (See *Kahn, supra*, 31 Cal.4th at pp. 1018-1019 [conc. opn. of Werdegar, J.]; *Givens v. Southern Pacific Co.* (1961) 194 Cal.App.2d 39, 43-44; Rest.2d Torts, § 500, com. a, pp. 587-588, com. g, p. 590.)

*Knight* continues in a negligence vein: “Although defendants generally have no legal duty to eliminate (or protect a plaintiff against) risks inherent in the sport itself, it is well established that defendants generally do have *a duty to use due care* not to increase the risks to a participant over and above those inherent in the sport.” (*Knight, supra*, 3 Cal.4th at pp. 315-316, italics added.)

As an example, and right after the language we have just quoted, *Knight* specifically referred to two hypothetical instances of negligence by the operator of a ski resort—the failure to remove moguls from a ski run, and the failure to maintain tow ropes in a safe working condition. Liability for the former instance of negligence was barred by assumption of risk, because the risk of hitting a mogul on a ski slope was inherent in the sport. Liability for the latter instance of negligence was not barred by assumption of risk, because the risk of being injured due to an unsafe tow rope was not inherent in the sport. Absent from this discussion is any mention of recklessness. (*Knight, supra*, 3 Cal.4th at p. 316.)

In *Cheong*, a majority of the Supreme Court restated the *Knight* rule as permitting liability only for intentional conduct or conduct so reckless that it is outside the range of the ordinary activity involved in the sport. (*Cheong, supra*, 16 Cal.4th at p. 1068; see

*Knight, supra*, 3 Cal.4th at p. 320.) But *Cheong* also spoke in terms of a duty of due care not to increase the risks beyond those inherent in the sport. (*Cheong, supra*, 16 Cal.4th at p. 1068.)

*Cheong* focused primarily on the relationship between assumption of risk and the doctrine of negligence per se—i.e., whether Evidence Code section 669, which provides for a presumption of a lack of due care for violation of a statute, ordinance or regulation, applied to the field of assumption of risk. The court did not resolve the issue. (*Cheong, supra*, 16 Cal.4th at p. 1071.) Separate opinions indicate the justices held varied views of the impact of Evidence Code section 669. Justice Chin, writing separately from his majority opinion, believed that the statute applied only to negligence and could not apply to assumption of risk—because assumption of risk involved only intentional and reckless conduct. (*Cheong, supra*, at pp. 1078-1079 [conc. opn. of Chin, J.]) Other justices were not so sure, and seemed to differ regarding the role of negligence in assumption of risk liability. (See *Cheong, supra*, at p. 1073, fn. 1 [conc. opn. of Mosk, J.]; *Cheong, supra*, at p. 1075 [conc. opn. of Kennard, J.]; *Cheong, supra*, at pp. 1076-1078 [conc. opn. of Werdegarr, J.].)<sup>4</sup>

*Kahn*, the most recent case in the line of the law of assumption of risk, reaffirms that liability under the *Knight* rule requires either intentional conduct or conduct so reckless as to be totally outside the range of the ordinary activity of the sport. *Kahn* does not discuss why *Knight*'s “duty of due care” language does not suggest that there can be liability for negligence for increasing the inherent risks of the sport. (See *Kahn, supra*, 31 Cal.4th at pp. 1003-1005, 1011.) Indeed, *Kahn* did not directly state that increasing

---

<sup>4</sup> Subsequent Court of Appeal cases preclude liability for negligence. *Record, supra*, 73 Cal.App.4th 472, assumed liability could only be imposed for intentional or reckless conduct. (*Record, supra*, at pp. 484-486.) *Distefano, supra*, 85 Cal.App.4th 1249, also interpreted *Knight* and *Cheong* as imposing liability only for intentional or reckless conduct, and precluding liability for negligence. (*Distefano, supra*, at pp. 1259-1261, 1264-1265.) So did *Moser v. Ratinoff* (2003) 105 Cal.App.4th 1211, 1222-1223 (*Moser*), and *Whelihan v. Espinoza* (2003) 110 Cal.App.4th 1566, 1575-1576 (*Whelihan*).)

the risks of the sport beyond the inherent remains a part of the *Knight* rule of assumption of risk.

But a discussion in *Kahn* of several assumption of risk decisions suggests that the Supreme Court majority still adheres to the concept that one has a duty of due care not to increase the risk inherent in the sport. (See *Kahn, supra*, 31 Cal.4th at pp. 1003, 1005-1010.) Nothing in *Kahn* overturns the language to that effect in *Knight* and *Cheong*—so we view the rule of assumption of risk in California that an actor is liable for breach of a duty of care by intentional conduct or conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport, in a kaleidoscope that includes scrutiny of conduct that breaches a duty of *due* care not to increase the risks inherent in the sport.

In assumption of risk cases, the existence and scope of the duty of care (or due care) is a question of law for the court, and a question “amenable to resolution by summary judgment.” (*Knight, supra*, 3 Cal.4th at p. 313; see *Kahn, supra*, 31 Cal.4th at p. 1004.) Questions of duty surrounding coparticipants in active sports involve the nature of the sport and the roles of the participants. The Supreme Court cautions that courts should not find a duty, and thus impose liability, for energetic conduct typical to the athletic activity—because that would “chill vigorous participation in the sport.” (*Kahn, supra*, at p. 1004.)

#### *The Law Applied to the Present Case*

Before we discuss plaintiff’s contentions, we observe that dirt bike riding is the sort of active sport which is clearly governed by the *Knight* rule. Courts have applied *Knight* to a bevy of team and individual sports, including freestyle off-road dune buggy and motorcycle riding (*Distefano, supra*, 85 Cal.App.4th 1249); personal watercraft riding (*Peart v. Ferro* (2004) 119 Cal.App.4th 60); jet skiing (*Whelihan, supra*, 110 Cal.App.4th 1566); and organized, long distance group bicycle riding (*Moser, supra*, 105 Cal.App.4th 1211). Indeed, courts have applied *Knight* to a veritable legion of sporting activities, many less energetic and far less dangerous than dirt bike riding. (See cases

collected in *Moser, supra*, at pp. 1220-1221; *Record, supra*, 73 Cal.App.4th at pp. 481-482; *Staten, supra*, 45 Cal.App.4th at p. 1633.)

Plaintiff argues that the defense summary judgment should be reversed for four substantive reasons. First, plaintiff contends that negligence per se survives the defense of assumption of risk, and that he should be permitted to go to trial on his allegations of negligence per se based on defendant's purported violations of Vehicle Code section 38305 and related statutes. Second, plaintiff argues that assumption of risk cannot justify summary judgment because there is unrebutted evidence that defendant was reckless. Third, plaintiff contends that assumption of risk cannot justify summary judgment because defendant's conduct increased the risks inherent in the sport of dirt bike riding. Fourth, plaintiff claims the issue of duty is not wholly objective, and his knowledge and skill is relevant to a determination of whether he assumed the risk.

We reject plaintiff's first and fourth contentions, but reverse on the second and find no need to address the third in the context of the facts of this case. Triable issues of fact exist whether defendant's conduct was so reckless as to be totally outside the range of the ordinary activity involved in the sport of dirt biking, as we explain below.

#### *Plaintiff's Unmeritorious Contentions*

In his first contention, plaintiff claims the doctrine of negligence per se (as codified in Evidence Code section 669) survives the defense of assumption of risk, and he should be allowed to proceed to trial on his negligence claims based on Vehicle Code violations. We need not discuss this issue at length. Although the Supreme Court did not resolve the issue in *Cheong*, the Courts of Appeal agree that statutory provisions do not abrogate the defense of assumption of risk unless the Legislature "has explicitly and unambiguously manifested a clear intent to do so. [Citations.]" (*Peart, supra*, 119 Cal.App.4th at p. 79; *Peart, supra*, at p. 84 [conc. opn. of Pollak, J.]; *Whelihan, supra*, 110 Cal.App.4th at p. 1575; *Moser, supra*, 105 Cal.App.4th at pp. 1225-1226; see *Distefano, supra*, 85 Cal.App.4th at pp. 1266-1274.) The Vehicle Code provisions on which plaintiff relies do not explicitly and unambiguously abrogate the rule of *Knight*.

In his fourth contention, plaintiff claims the issue of duty is not wholly objective, and his knowledge and skill is relevant to a determination of whether he assumed the risk. But the case law is clear that the question of duty *is* entirely objective. The subjective expectations, knowledge, or individual skills of the plaintiff, as well as the reasonableness or unreasonableness of his conduct, are irrelevant to the question of duty. (See, e.g., *Kahn, supra*, 31 Cal.4th at pp. 1003-1004, 1016; *Knight, supra*, 3 Cal.4th at pp. 312-313; *Record, supra*, 73 Cal.App.4th at pp. 482-483.)

*Plaintiff's Meritorious Contention*

In his second contention, plaintiff argues that he presented un rebutted evidence that defendant's conduct was reckless. Stavro testified at his deposition that defendant could be considered to have been acting recklessly by riding his dirt bike in excess of 50 mph toward an intersection and toward the entry area of the park where a high concentration of people, including families with children, would gather. Stavro also testified the safe speed at the point of the accident—on the functional equivalent of a “bunny slope”—was 20 mph.<sup>5</sup> A witness to the accident testified he believed defendant was acting like “an idiot” by riding “balls out,” or at full throttle, toward a blind curve.

Defendant did not rebut this evidence. It remains to determine whether this evidence of recklessness establishes a triable issue of fact that defendant's conduct was *so* reckless that it was totally outside the range of the ordinary activity involved in the sport. We believe there is such a triable issue of fact.

The test for whether conduct is totally outside the range of the ordinary activity involved in a sport hypothesizes a prohibition on that conduct. If a ban on the conduct neither deters vigorous participation in the sport nor fundamentally alters the nature of the sport, then the conduct falls outside the sport's range of ordinariness. (*Record, supra*, 73 Cal.App.4th at p. 484; see *Moser, supra*, 105 Cal.App.4th at p. 1222.)

---

<sup>5</sup> Stavro testified as an expert in dirt bike operation and safety. Although *Staten* questioned whether a court could rely on expert testimony to help determine the legal question of duty (*Staten, supra*, 45 Cal.App.4th at pp. 1634-1636), our Supreme Court has approved the practice. (*Kahn, supra*, 31 Cal.4th at pp. 1017-1018.)

Here defendant arguably sped recklessly at over twice the safe speed limit toward a blind curve and a crowded entry area to the park. He was aware other dirt bike trails were nearby because he had traveled over them. By his allegedly reckless actions he lost control and crossed a berm into the path of an oncoming bike rider, who was doing nothing more than enjoying the sport. While the sport of dirt bike riding may include within its ordinary range of activity certain types of injuries or even collisions, we cannot say as a matter of law that a head-on collision under these circumstances, in a park with regulated one way trails, is within the ordinary range for this noncompetitive, leisure, dirt bike riding activity. Children also ride on the trails. The bike riders at Hollister Hills were learning and practicing their skills on regulated, graded, one way dirt roads, designed for novices and posted for operating at speeds that do not endanger the safety of others. To accelerate to 50 mph on a blind curve, near an area where other riders merge on beginner trails, could constitute reckless activity totally outside the range of ordinary dirt bike riding for this type of facility. It remains a disputed fact for a jury to decide. Plaintiff offered evidence that can remove the case from primary assumption of risk. Defendant St. John did not know what happened after he accelerated on the blind curve.

Defendant relies heavily on *Distefano*, but that case is easily distinguishable. *Distefano* involved “freestyle” off-road riding of dune buggies and motorcycles in an area of rough desert terrain in an unincorporated area. (*Distefano, supra*, 85 Cal.App.4th at p. 1255.) The area “consist[ed] of natural terrain with blind hills, inherently uneven areas, and vegetation. There [were] no streets with established boundaries or markings. Instead, there [were] dirt trails or pathways that are ever changing due to unrestrained off-road vehicular activity and the forces of nature.” There were “no traffic controls . . . or right of way signs. Because [the] area [was] uncontrolled, off-roading participants [could] navigate off the main trails and maneuver any way they [chose], including driving over the top of . . . blind hill[s]”—where they could not see a rider on the other side. (*Ibid.*) That is how the accident in *Distefano* occurred. (*Id.* at pp. 1255-1256.)

Hollister Hills, by contrast, is a regulated area of one way trails, signed “one way” and “do not enter.” Nothing indicates riders were allowed to leave the trails. The trials

were not ephemeral, drifting with the natural forces of wind or erosion or the man made forces of vehicular use: they are maintained in fixed locations with heavy equipment. The park itself is regulated and patrolled by armed park rangers.

There is a triable issue of fact whether the activity of dirt bike riding at the park included, within its ordinary range, reckless conduct such as defendant's—whereby he sped out of control on a novice trail and left his own regulated one way trail at high speed, leaped a barrier, and found himself on another trail going the wrong way.

Imposing liability for conduct such as defendant's will not deter the vigorous participation in recreational dirt bike riding. If anything, it will encourage it. Imposing liability for recklessly operating one's motorcycle so as to cause a head-on collision, on another trail where the defendant does not belong, will only encourage safe driving on a regulated course—and make it more, not less, likely that individuals will participate.

We conclude there are triable issues of fact whether defendant's conduct was so reckless as to be totally outside the range of the ordinary activity involved in this particular type of dirt biking, or whether Bonfigli's injuries resulted from conduct that was merely careless or negligent.<sup>6</sup> Accordingly, we reverse the summary judgment.

### **III. DISPOSITION**

The summary judgment is reversed. Each party shall bears their own costs on appeal.

---

Marchiano, P.J.

We concur:

---

Swager, J.

---

Margulies, J.

---

<sup>6</sup> See Judicial Council of Cal. Civil Jury Instns. (2004) CACI No. 408.